90-1109

NO.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1990

THOMAS LYNN SMITH
Petitioner

VERSUS

HARBOR TOWING & FLEETING, INC.
Defendant

AND

CHOTIN TRANSPORTATION, INC.
Defendant-Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

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24

QUESTIONS PRESENTED FOR REVIEW

1. Whether the duty to provide a seaworthy vessel extends to a seaman excluded from Longshore and Harbor Worker's Compensation Act coverage, who is injured while performing traditional seaman's work aboard a non-employing shipowner's vessel?

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents ii

Table of Authorities iii

Opinions Below 1

Jurisdiction 2

Statement of the Case and Facts 2

Existence of Jurisdiction in the Trial Court 3

Reasons for Granting the Writ 4

Conclusion 7

Certificate of Service 8

Appendix A - Opinion of the United States Court of Appeals for the Fifth Circuit A-1

Appendix B - Orders and Reasons of the United States District Court for the Eastern District of Louisiana A-9

TABLE OF AUTHORITIES

CASES **Page**

Aparicio v. Swan Lake, 643 F.2d 1109 (5th Cir. Unit A 1981) 5,6

Mahramas v. American Export Isbrandtsen Lines, Inc., 475 F.2d 165 (2nd Cir. 1973) 4,5,6

Moragne v. States Marine Lines, Inc. 398 U.S. 375 (1977) 7

Seas Shipping Co., Inc. v. Sieracki, 328 U.S. 85 (1946) 3,5,6

Smith v. Harbor Towing & Fleeting, Inc., 910 F.2d 312 (5th Cir. 1990) 5,6

STATUTES

28 U.S.C. Sec. 1254 (1) 2

33 U.S.C. Sec. 901 et seq 5

46 U.S.C. Sec. 688 3

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The Petitioner, Thomas Lynn Smith, respectfully prays that a writ of certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on September 6, 1990.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 910 F.2d 312.

JURISDICTION

The judgment of a panel of the United States Court of Appeals for the Fifth Circuit was entered on September 6, 1990. A timely petition for rehearing was denied on October 12, 1990, and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

STATEMENT OF THE CASE AND FACTS

On September 11, 1988, Thomas Lynn Smith was employed as a deck hand and member of the crew aboard the vessel M/V TODD G, a vessel owned and operated by Harbor Towing and Fleeting, Inc. (Harbor Towing).

On that date, the M/V TODD G was pushing two fuel barges down the Mississippi River to another facility. The two barges were owned by defendant-respondent, Chotin Transportation, Inc. (Chotin).

As part of his seaman duties, Thomas Lynn Smith had been ordered by the captain of the M/V TODD G to make up the rigging and join one of the Chotin barges to the other. As instructed, Smith went aboard one of the Chotin barges. In order to rig the Chotin barges together, it was necessary for Smith to unlink and straighten the wire cable from one of the stationary winches aboard the Chotin barge. The deck of the Chotin barge on which Smith was working was also covered in parts with diesel or hydraulic fluid. As Smith was attempting to unlink the cables aboard the Chotin barge, he slipped and fell on the oily deck.

Mr. Smith filed suit against his employer, Harbor Towing, under the Jones Act and general maritime law

alleging negligence of his employer and the unseaworthiness of the vessel M/V TODD G. Mr. Smith subsequently amended his complaint and added Chotin as a defendant alleging general maritime negligence and the unseaworthiness of the Chotin barges. The unseaworthiness claim was based upon this Court's decision in *Seas Shiping Co., Inc. v. Sieracki*, 328 U.S. 85 (1946) to the effect that a shipowner's obligation of seaworthiness is not confined solely to seaman who perform the ship's service under immediate hire of the owner, but extends to those who render it with his consent or by his arrangement.

The trial court subsequently dismissed Mr. Smith's unseaworthiness claim against Chotin on Motion of Summary Judgment of Chotin holding that Chotin did not owe Smith a warranty of seaworthiness on its barges.

A timely appeal was taken by plaintiff and a decision was rendered by the Court of Appeals for the Fifth Circuit on September 6, 1990 holding that Smith could not assert a *Sieracki* unseaworthiness claim against Chotin.

Appellant, Thomas Lynn Smith, timely filed a petition for rehearing en banc with the Court of Appeals for the Fifth Circuit on September 20, 1990. Appellant's petition for rehearing was denied by the Fifth Circuit on October 12, 1990.

EXISTENCE OF JURISDICTION IN THE TRIAL COURT

The District Court for the Eastern District of Louisiana had jurisdiction over this claim under 46 U.S.C. Sec. 688 (Jones Act) and pursuant to the Court's admiralty jurisdiction.

REASONS FOR GRANTING THE WRIT

1.

THE OPINION OF THE FIFTH CIRCUIT IS IN CONFLICT WITH THE SECOND CIRCUIT IN GENERAL MARITIME LAW, AN AREA WHERE THIS COURT HAS MANDATED UNIFORMITY OF DECISIONS

There now exists a direct conflict of the Fifth Circuit and the Second Circuit in the Admiralty jurisdiction. In the Second Circuit, the duty to provide a seaworthy vessel extends to a seaman, excluded from Longshore and Harbor Workers Compensation Act coverage, who is injured aboard a non-employing shipowner's vessel. *Mahramas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165 (2nd Cir. 1973).

In Mahramas, the plaintiff was a professional hairdresser employed by a hair dressing company and assigned to work in the beauty shop on the vessel S.S. INDEPENDENCE. While working aboard the vessel, the plaintiff was required to have seaman papers and sign ship's articles, thus establishing her seaman status. The plaintiff suffered injury to her lower back when a step on a ladder which she was climbing on the vessel gave way. Plaintiff brought various claims against her employer and the shipowner including, an unseaworthiness claim against the vessel owner. The vessel owner was not her employer. At trial, the trial court found against the plaintiff on the unseaworthiness claim and this decision was affirmed by the Second Circuit though on somewhat different legal basis than those relied on by the Court below.

The pertinent issue addressed by the *Mahramas*

Court concerned the propriety of the plaintiff's actions against the shipowner for unseaworthiness. As with the case at bar, *Mahramas* arose in the context "where a plaintiff-employee is injured aboard a ship but is not employed by the shipowner and is not covered by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901 et seq." *Id.* at 169.

In relying upon this Court's decision in *Seas Shipping Co., Inc. v. Sieracki*, 328 U.S. 85 (1946), the Second Circuit held that there was no question that a non-employing shipowner owed a duty to provide a seaworthy vessel to a seaman performing the ship's service with the owner's consent or by his arrangement. *Id.* at 169.

In *Smith v. Harbor Towing & Fleeting, Inc.*, 910 F.2d 312 (5th Cir. 1990), plaintiff, Thomas Smith is in the same position as the *Mahramas* plaintiff. Mr. Smith was employed by one company (Harbor Towing), but was injured while performing his seaman duties aboard the shipowner's vessel with the consent and by the arrangement of the shipowner (Chotin). The Fifth Circuit confirmed that he did not come under the LHWCA ("It is true that as 'a member of the crew of any vessel,' Smith is excluded from LHWCA coverage." *Smith*, supra, at 314.)

The Fifth Circuit conceded that "as a 'maritime worker [ ] not covered by the LHWCA, ' Smith would arguably be entitled to a *Sieracki* remedy." *Id.* at 314. But the Court refused to bestow *Sieracki* seaman status on Smith arguing that a seaman performing a seaman's task on a nonemployer's vessel is not entitled to an unseaworthiness remedy. The opinion files directly in the face of a previous decision of another panel of the Fifth Circuit (*Aparicio v. Swan Lake*, 643 F.2d 1109 (5th Cir. Unit A 1981)), in which it was held that a longshoreman engaged

in the classic seaman's task of handling lines aboard a nonemployer's vessel, is entitled to an action for unseaworthiness under *Sieracki*. *Aparicio* at 1118. The *Smith* Court recognized the inconsistency of *Smith* and *Aparicio* ("we are not unmindful of the fact longshoreman performing a seaman's task on a nonemployer's vessel are entitled to an unseaworthiness remedy while seaman performing the same task are not." *Id.* at 315)

As the *Smith* Court pointed out, the broader question before this Court is whether *Sieracki* still survives with respect to those maritime workers not covered by the LHWCA. *Smith*, supra, at 313. The *Smith* Court noted that the Fourth Circuit and Ninth Circuit have reached the conclusion that the 1972 amendments completedly abolished the *Sieracki* unseaworthiness action, although the Fifth Circuit (in *Aparicio*) has reached a less sweeping conclusion. *Id.* at 313-14. This broader conflict among the Circuits is still another reason why this Court should review the case at bar.

Petitioner respectfully submits that, consistent with this Court's decision in *Sieracki* and the decision of the Second Circuit in *Mahramas*, he is entitled to an unseaworthiness remedy against Chotin. If there is to be any efficacy to the jurisprudential requirement that admiralty law must be consistent throughout the United States, review of the Fifth Circuit's opinion in this instance is required.

CONCLUSION

Conflicts in an area of the law requiring uniformity must be addressed. In the Second Circuit, a non-employing shipowner owes a duty to provide a seaworthy vessel to a seaman performing the ship's service with the owner's consent or by his arrangement. That same seaman has no such remedy in the identical situation in the Fifth Circuit. This issue is simple and direct. Only this Honorable Court has the authority to make the federal admiralty law "coextensive with, and operating uniformity in, the whole country." *Moragne v. States Marine Lines, Inc.* 398 U.S. 375 (1977). Petitioner respectfully prays that writs be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he had this 7th day of January, 1991 mailed a copy of the foregoing pleading to the attorneys of record for all other parties in this action by placing same properly addressed in the U.S. Mail with sufficient postage to insure delivery.

_____

A. REMY FRANSEN, JR.

APPENDIX A

Thomas Lynn SMITH,
Plaintiff-Appellant,

v.

HARBOR TOWING & FLEETING, INC.
Defendant

Chotin Transportation Co., Inc.
Defendant-Appellee.

No. 89-3762

United States Court of Appeals,
Fifth Circuit

Sept. 6, 1990.

Jones Act seaman who was injured while performing seaman's work aboard a nonemploying shipowner's vessel sued the shipowner for unseaworthiness. The United States District Court for the Eastern District of Louisiana, George Arceneaux, Jr., J., granted owner's motion for summary judgment, and seaman appealed. The Court of Appeals, Thornberry, Circuit Judge, held that the seaman could not assert a *Sieracki* seaworthiness couse of action against a vessel on which he was not crew member.

Affirmed.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before Thornberry, Gee, and Smith, Circuit Judges.

THORNBERRY, Circuit Judge:

This appeal raises the sole issue of whether a Jones Act seaman who is injured while performing seaman's work aboard a nonemploying shipowner's vessel can sue the shipowner for unseaworthiness as a *Sieracki* seaman. We hold that a Jones Act seaman cannot assert a *Sieracki* unseaworthiness cause of action against a vessel on which he is not a crew member.

Facts and Procedural History

At the time of his injury, plaintiff Thomas Lynn Smith (Smith) was a deckhhand and crew member aboard the M/V TODD G, a tug owned and operated by his employer, Harbor Towing and Fleeting, Inc. (Harbor Towing). Harbor Towing supplied tugs and fleeting facilities to shift and fleet various barges, including barges owned by Chotin Transportation, Inc. (Chotin).

On September 11, 1988, the M/V TODD G was preparing to push two fuel barges owned by Chotin to another fleeting facility. The captain of the M/V TODD G ordered Smith to board the barges and rig them together for towing. Smith claims that in order to rig the barges together, it was necessary to straighten a tangled wire cable attached to a barge winch. While he was trying to untangle the kinked wire, Smith allegedly injured his arm and back when he slipped on some diesel oil on the deck of one of the barges.

The two Chotin barges, the CH-2084 and CH-1882, were nonpropelled barges that could be navigated only with the aid of tugs or towboats. Apart from Smith, they were unmanned at the time of the accident and Chotin states that they have never had a crew. Chotin also claims

that both barges had been inspected by the Coast Guard and received their biannual Certificates of Inspection on September 9, 1988.

Smith sued Harbor Towing under the Jones Act, 46 U.S.C. App. Sec. 688, and the general maritime law, seeking $5.25 million in actual and punitive damages. He also asserted a claim against Chotin for general maritime negligence and for breaching the warranty of seaworthiness. Smith claims that the presence of diesel oil on the deck and the kinked winch wire rendered the Chotin barges unseaworthy. Harbor Towing filed a cross-claim against Chotin seeking indemnity and contribution for any amounts for which it may be liable, claiming that any damages were caused by Chotin's fault, negligence, and by the unseaworthiness of Chotin's barges.

The district court concluded as a matter of law that because Smith was not a crew member as to either of Chotin's barges, Smith was owed no duty of seaworthiness. Accordingly, it granted Chotin's motion for partial summary judgment. After the district court entered a final judgment pursuant to Fed.R.Civ.P. 54(b), Smith brought this appeal.

Discussion

The parties agree that Smith was a seaman with respect to his employer's tug, the M/V TODD G. There is no doubt that the Chotin barges are vessels. But due to the transitory nature of his work aboard these barges, Smith concedes that he does not qualify as a Jones Act seaman on Chotin's barges. See *Offshore Co. v. Robinson*, 266 F.2d 769, 779 (5th Cir. 1959) (requiring, among other things, that the maritime worker be permanently assigned to a vessel or perform a substantial part of his work on a vessel).

Smith argues, however, that Chotin owed him a duty of seaworthiness on the grounds that he qualifies as a "*Sieracki* seaman."

In *Seas Shipping v. Sieracki*, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099 (1946), the Supreme Court rejected the notion that the vessel owner's duty to furnish a seaworthy vessel extended only to those maritime workers employed by the vessel owner. *Id.* at 90-94, 66 S.Ct. at 875-77. The Court extended a cause of action for unseaworthiness to longshoreman "doing a seaman's work and incurring a seaman's hazards." *Id.* at 99, 66 S.Ct. at 880. Subsequently, the Court recognized that an implied warranty of workmanlike performance ran from the stevedore by contract to the shipowner. Thus, the shipowner was entitled to full indemnity if the plaintiff's employer breached this implied warranty. See *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124, 133, 76 S.Ct. 232, 237, 100 L.Ed. 133 (1956). The result of these holdings was to expose a stevedore to liability even though section 905 of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) expressly limited the employer's liability to worker's compensation. *See* 33 U.S.C. Sec. 905(a).

In 1972 Congress amended the LHWCA to add section 905(b), which provides that any "person covered" under the Act may no longer bring an action against a third-party vessel owner "based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred." 33 U.S.C. Sec. 905(b). Thus, Congress abolished the *Sieracki* unseaworthiness cause of action and the *Ryan* indemnity action for those employees covered by the LHWCA. See *Edmonds v. Compagnie Generale Transatlantigue*, 443 U.S. 256, 260, 99 S.Ct. 2753, 61 L.Ed.2d 521 (1979).

Following the 1972 amendments, courts were faced with the question of whether *Sieracki* still survived with respect to those maritime workers not covered by the LHWCA. Some courts have reached the conclusion that the 1972 amendments completely abolished the *Sieracki* seaworthiness action.[1] In *Aparicio v. Swan Lake*, 643 F.2d 1109 (5th Cir. Unit A Apr. 1981), however, this court reached a less sweeping conclusion. Aparicio, a harbor worker employed by the Panama Canal Company, was injured while handling the lines of a vessel in the Canal Zone. As a federal employee working in the Canal Zone and covered by the Federal Employees' Compensation Act(FECA), 5 U.S.C. Secs. 8101-93, Aparicio was not covered by the LHWCA. In *Aparicio*, we concluded that maritime workers covered by FECA, but who were not covered by the LHWCA, were not barred by the 1972 amendments from asserting claims as a *Sieracki* seaman. *Id.* at 1116-18. Because Aparicio was a longshoreman engaged in the classic seaman's work of handling the lines of a vessel, we held that he was entitled to an action for unseaworthiness under *Sieracki*. *Id.* at 1114 & n. 7. Two years later, in *Cormier v. Oceanic Contractors, Inc.* 696 F.2d 1112, 1113 (5th Cir.1983), cert. denied, 464 U.S. 821, 104 S.Ct. 85, 78 L.Ed.2d 94 (1983), this court applied *Aparicio* and held that a welder working aboard a vessel in a foreign country, and thus beyond the reach of the LHWCA, was entitled to *Sieracki* seaman status.

Smith would have this court extend the holdings of *Aparicio* and *Cormier* to Jones Act seamen. It is true that as "a member of the crew of any vessel," Smith is excluded

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[1] See e.g., *Normile v. Maritime Co. of the Philippines*, 643 F.2d 1380,. 1382 (9th Cir. 1981); *United States Lines, Inc. v. United States*, 593 F.2d 570, 572 (4th Cir. 1979); *Grice v. A/S J. Ludwig Mowinckels*, 477 F.Supp. 365, 371 (S.D. Ala. 1979).

from LHWCA coverage. 33 U.S.C. No. 902(3)(G). Thus, as a "maritime worker [ ] not covered by the LHWCA,"Smith would arguably be entitled to a *Sieracki* remedy. *Aparicio*, 643 F.2d at 1118. This court, however, has refused to extend the special protections of *Sieracki* seaman status to Jones Act seamen injured on vessels on which they are not crew members. In *Bridges v. Penrod Drilling Co.*, 740 F.2d 361 (5th Cir.1984), plaintiff Bridges was a seaman by virtue of his assignment as a roustabout aboard his employer's drilling barge the PENROD 72. He was ordered to board and unload a third-party supply vessel, the THOMAS DRAYTON, and was injured when a runaway drum on the deck crushed him. Bridges asserted an unseaworthiness cause of actiion against the owner of the supply vessel. The court rejected his claim and held that a seaman injured while performing the duties of a longshoreman, in a setting not subject to the LHWCA, was not a *Sieracki* seaman. *Id.* at 364.

The court explained that unlike the plaintiffs in *Aparicio* and *Cormier*, who were not Jones Act seamen, there was no need for Bridges to leave his regular seaman status and join the pockets of *Sieracki* seamen:

> As a member of the crew of the special purpose vessel PENROD 72, Bridges was possessed of the full range of traditional seaman's rights and remedies: maintenance and cure and a Jones Act negligence claim against his employer as employer, an unseaworthiness claim against his employer as vessel owner for any injury on the PENROD 72, and a negligence claim in maritime tort for Offshore's breach of duty of reasonable care under the circumstances. In order to achieve adequate protection it was not necessary that Bridges be characterized as a remnant *Sieracki* seaman of the THOMAS DRAYTON. It cannot

> be said that Bridges was either "covered by no compensation act or by a compensation scheme that is far more stringent in its benefits than is the LHWCA." *Aparicio*, 643 F.2d at 1118 n. 17. . . .One with seaman status does not become additionally a *Sieracki* seaman by doing stevedoring work which might be styled traditional seaman's duties.

Id., *see* also *Book v. Nordrill, Inc.*, 826 F.2d 1457, 1463 (5th Cir.1987) (holding that roustabout could not assert an unseaworthiness action against owner of vessel because he was not assigned to the vessel or a member of its crew).

We believe that *Bridges* controls this case. Like the plaintiff in *Bridges*, Smith has a variety of possible remedies as a Jones Act seaman: maintenance and cure and a Jones Act negligence claim against his employer as employer, an unseaworthiness claim against his employer as vessel owner for any injury on the M/V TODD G, and a negligence claim in maritime tort for Chotin's breach of duty of reasonable care under the circumstances. *Bridges*, 740 F.2d at 364. Thus, there is no need for him to join the pocket of *Sierachi* seamen.

Conclusion

In summary, we hold that a Jones Act seaman, who possesses the full range of traditional seamen's rights and remedies, cannot maintain a *Sieracki* seaworthiness action against a vessel on which he is not a crew member. In reaching this conclusion, we are not unmindful of the fact that longshoremen performing a seaman's task on a nonemployer's vessel are entitled to an unseaworthiness remedy while seamen performing the same task are not. Although this court may wish to reexamine this issue en

banc, until then the holding in *Bridges* controls this case. Thus, we hold that Smith may not assert a *Sieracki* unseaworthiness claim against Chotin, and the judgment of the district court is hereby

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

THOMAS LYNN SMITH	*	CIVIL ACTION
	*	
VS.	*	NO. 88-4785
	*	
HARBOR TOWING AND FLEETING, INC., ET AL	*	SECTION "K" (5)
	*	
* * * * * * *	*	

ORDER AND REASONS

This matter comes before the Court on motion for partial summary judgment filed by Chotin Transportation, Inc. ("Chotin"). Having thoroughly reviewed the record, the memoranda of counsel and the law, the Court has determined that partial summary judgment is appropriate for the reasons set forth hereinafter.

The plaintiff, Thomas Lynn Smith ("Smith"), has sued the defendants, Harbor Towing & Fleeting, Inc. ("Harbor Towing") and Chotin for personal injuries allegedly sustained when he slipped on some diesel oil on the deck of one of Chotin's barges. He has sued Harbor Towing under the Jones Act and general maritime law. His claim against Chotin is for general maritime law negligence only. Harbor Towing filed a cross-claim against Chotin seeking indemnity and contribution for any amounts for which it may be liable, claiming said damages were caused by Chotin's fault, neglect and lack of care, and by the unseaworthiness of the Chotin barges.

Harbor Fleeting supplied tugs and fleeting facilities to shift and fleet various Chotin barges. Smith, an employee of Harbor Fleeting, claims to have been injured when tying the two Chotin barges together in preparation for their movement. It is undisputed that Smith was a seaman with respect to the Harbor Fleeting tug. At issue in this motion is whether Smith was owed a warranty of seaworthiness from Chotin, as owner of the barges.[1]

The Fifth Circuit was held that a plaintiff's status as a crew member of one vessel does not enhance his relationship to a second vessel. *Dove v. Belcher Oil Co.*, 686 F.2d 329 (5th Cir. 1982). In addition, the traditional test for determining seaman status set forth in *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959), is applied in determining whether an plaintiff is a seaman owed the warranty of seaworthiness as to that second vessel. *Book v. Nordrill, Inc.*, 826 F.2d 1457 (5th Cir. 1987), *Dove*, supra. It is undisputed here that Smith was not permanently attached, nor did he perform a substantial part of his work aboard, the Chotin barges. This Court's analysis in this matter need go no further, and it is not free to adopt an analysis not recognized by the Fifth Circuit in formulating this rule concerning the underpinnings and subsequent vitality of *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946).[2]

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[1] The plaintiff had previously represented to the Court that he intended to make no claim for unseaworthiness of the Chotin barges. (Doc. 33). Nonetheless, the alleged warranty of seaworthiness owed Smith at issue in this motion forms the only basis of the claim of unseaworthiness raised in Harbor Towing's cross-claim, Harbor Towing having presented no other argument relative to its application in this matter.

[2] The Court does not find reason to ignore this rule in the dicta contained in Baker v. Raymond International, Inc., 656 F.2d 173, 181 (5th Cir. 1981) that "[t]he duty to provide a seaworthy vessel is absolute and extends not only to the owner's employees but to all who do seaman's

The Court notes that the leading cases cited by counsel actually presume the application of the above cited rule. In *Bridges v. Penrod Drilling Co.*, 740 F.2d 361, 364 (5th Cir. 1984), the Fifth Circuit held that a plaintiff who was a seaman as to his employer's vessel could not claim the unseaworthiness of a second vessel by joining a "pocket of *Sieracki* seaman": "One with seaman status does not become additionally a *Sieracki* seaman by doing stevedoring work which might be styled traditional seaman's duties." Of course, such legal gymnastics could have been avoided had the plaintiff's ability to sue the vessel for unseaworthiness been recognized among the traditional seaman's remedies enumerated therein, or had the plaintiff otherwise qualified as a seaman with respect to that vessel.

In *Burks v. American River Transportation Co.*, 679 F.2d 69 (5th Cir. 1982), a longshoreman sought seaman status in order to sue the vessel owner for unseaworthiness and avoid the limitations presented by the 1972 Amendments to the Longshoremen's and Harbor Worker's Compensation Act. The traditional *Robison, supra,* test was utilized to determine whether he qualified as a "member of the crew" for purposes of 33 U.S.C. ?902(3) with regard to the allegedly offending vessel, independent of any relationship he may have enjoyed as to a vessel owned by his employer and upon which he worked.

Here, the facts present a simpler model. This seaman was performing traditional seaman's duties on board a

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Footnote 2 continued.
work." While the quoted language summarizes that part of Sieracki, supra which held that the warranty of seaworthiness is not dependent on an employment relationship with the owner, it does not address the issue presented in this matter.

second vessel as to which he did not qualify as a member of the crew. The plaintiff is owed no warranty of seaworthiness by the owner of this second vessel under *Book, supra* and *Dove, supra.* This being the sole basis of the cross-claim for indemnity and contribution against Chotin,

IT IS ORDERED that the motion for partial summary judgment filed by Chotin Transportation, Inc., is hereby GRANTED.

May 31st, 1989 UNITED STATES DISTRICT JUDGE
New Orleans, Louisiana (illegible)